

PORTS AND HARBORS

California conducts a tremendous amount of commerce through its port facilities. It is estimated that California transports 184 million tons of cargo and over three million passengers by vessel each year, representing one of the world's largest volumes of ocean trade and passenger transport (U.S. Army Corps of Engineers 1993). With its numerous ports and intermodal links, California serves as a critical thoroughfare for the nation's increasing role in Pacific Rim trade. Trade with Pacific Rim nations accounted for 25% of the Nation's imports and exports in 1980; by 1993, that share of trade was almost 35% of the national total and rising (U.S. Department of Commerce 1994). An economic analysis conducted by the California Research Bureau found that, in 1992, ports and port-related activities contributed approximately \$6 billion to the California economy (California Research Bureau 1993).

The waters within California's ports also provide critical sheltered water habitat for a wide variety of ocean and coastal species that are ecologically important, as well as being important to commercial and recreational fishery interests. For example, the waters within the Ports of Los Angeles and Long Beach include some of the last sheltered subtidal habitat in Southern California, providing nursery habitat for some species and year-round habitat for others. San Francisco Bay ports provide critical habitat for commercial Dungeness crab, Chinook salmon, and Pacific herring.

Ocean and coastal resources are affected by port maintenance and development activities because dredge, fill, and other operations within the ports can adversely affect or eliminate habitat. In addition, dredge materials are sometimes proposed for disposal at ocean sites which also can adversely affect a wide variety of ocean and coastal resources.

BACKGROUND

Port development in California (such as dredging to maintain ship channels or filling submerged areas to increase land for port terminals) is generally subject to the regulatory, planning, or technical consultation authorities of the:

- **National Marine Fisheries Service** (Fish and Wildlife Coordination Act; Endangered Species Act),
- **U.S. Army Corps of Engineers** (Clean Water Act; Rivers and Harbors Act),
- **U.S. Environmental Protection Agency** (Clean Water Act; Marine Protection, Research, and Preservation Act),
- **U.S. Fish and Wildlife Service** (Fish and Wildlife Coordination Act; Endangered Species Act),
- **California Coastal Commission** (California Coastal Act; Coastal Zone Management Act),
- **California Department of Fish and Game** (California Fish and Game Code; several other State and federal statutes),
- **San Francisco Bay Conservation and Development Commission** (McAteer-Petris Act; Suisun Marsh Preservation Act; Coastal Zone Management Act) for projects located in San Francisco Bay,

- **State Coastal Conservancy** (Public Resources Code, Division 21; Coastal Zone Management Act),
- **State Lands Commission** (Public Resources Code, various provisions; several State and federal statutes), and
- **State Water Resources Control Board and Regional Water Quality Control Boards** (Clean Water Act; Porter-Cologne Water Quality Control Act).

The Coastal Zone Management Act (CZMA) establishes a unique relationship between federal and state governments to carry out ocean and coastal management objectives. The California Coastal Commission (Coastal Commission), San Francisco Bay Conservation and Development Commission (BCDC), and the State Coastal Conservancy (Coastal Conservancy) implement important segments of California's Coastal Management Program (CCMP), approved pursuant to CZMA. The Coastal Commission and BCDC require permits for port development activities and must determine if applications for federal permits are consistent with the CCMP. The Coastal Conservancy is designated as the State's coordinator for urban waterfront development. In this role, and through its resource enhancement and public access programs, the Coastal Conservancy has been involved in port affairs including developing facilities in ports for commercial fishing, working to obtain public access to coastal waters through port properties, and crafting innovative solutions to mitigate the impacts of port development projects on fish and wildlife habitat.

ISSUE ANALYSIS

For the purposes of this discussion, California's ports are divided into three groups:

1. San Francisco Bay ports with developments reviewed by the BCDC (predominant issues: dredging to maintain shipping channels, disposal of dredged materials, and fill for new terminal development);
2. Major commercial ports required to produce port master plans under Chapter 8 of the California Coastal Act (predominant issues: expansion of port facilities which usually requires filling or dredging); and
3. All other coastal ports not identified in Chapter 8 of the California Coastal Act, but subject to the Act's standard resource protection policies (predominant issues: port maintenance, small improvement projects, and recreational conflict).

San Francisco Bay Ports

San Francisco Bay (Bay) includes the ports of San Francisco, Oakland, Richmond, Benicia, Redwood City, and the Encinal Terminals in Alameda. State development permits for these ports, and any other port facility within the Bay, such as proprietary terminals, are issued by the BCDC. Federal permits for projects that "affect" the Bay must be consistent with the BCDC's management program for the San Francisco Bay segment of the CCMP.

Seaport development in the Bay is guided by the San Francisco Bay Area Seaport Plan (Seaport Plan), jointly prepared and administered by the BCDC and the Metropolitan Transportation Commission (MTC). The Seaport Plan was prepared with the assistance of the Seaport Plan Advisory Committee, consisting of representatives from the BCDC, MTC, Bay Area ports, California Department of Transportation, federal Maritime Administration, Association of Bay Area Governments, and Save San Francisco Bay Association. The Seaport Plan is intended to foster port development and operations with the minimum

impact to the Bay's natural resources, upland uses, or transportation systems. The Seaport Plan is incorporated into the BCDC's Bay Plan and MTC's Regional Transportation Plan.

Dredging and the Decision-Making Process. Dredging of the Bay for maritime trade, recreational boating, and other public trust uses annually creates approximately 4 million cubic yards (mcy) of dredged material that must be disposed (McGrath, pers. comm.). In addition, there are proposals to deepen existing channels at Oakland and Richmond Harbors. Dredging and the disposal of dredged material can damage the natural systems of the Bay, an estuary of international importance. The dilemma facing Bay ports, maritime shipping, and environmental protection interests is how best to balance the needs of maritime commerce with the protection and management of the Bay's significant aquatic and wildlife resources.

In 1989, concerns about overburdening disposal sites for dredged material and potentially harming local fisheries and ecosystems put a halt to certain major projects for channel deepening. The competing needs of industry, ports, fishermen, and the environment caused a debate over where and how to dispose of dredged material. In response to these concerns, representatives from the U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency (USEPA), Secretary for Environmental Affairs (now CalEPA), State Water Resources Control Board, San Francisco Bay Regional Water Quality Control Board, and BCDC embarked on a Long Term Management Strategy (LTMS) to establish solutions to these issues. The LTMS also includes the active participation of over 40 other concerned public agencies and private interest groups.

Consensus Approach To Bay Dredging Challenges. The LTMS is a consensus-based problem solving process designed to formulate a long-range management plan and implementation program to guide the disposal of dredged materials from San Francisco Bay in an environmentally and economically sound manner. The draft LTMS Management Plan was released in August 1994, the draft Environmental Impact Statement/Report (EIS/R) was released for public comment in April 1996, and the final EIS/R is due to be released by February 1997. The final Management Plan to implement the adopted strategy will be prepared in 1997 and is intended to form a template for development within the San Francisco Bay for the next 50 years. Any policy or regulatory changes developed during the LTMS process will be brought before the appropriate regulatory agencies for their consideration and approval. Although the process is intended to be consensus based, challenges remain. Both the Port of Oakland and some public interest groups have ongoing concerns regarding the feasibility and environmental impact of certain options under consideration in the LTMS process. It will be important for these concerns to be thoroughly addressed through this process and reflected in the final EIS/R and Management Plan that follow.

Technical studies conducted during development of the LTMS Management Plan address upland, ocean, and in-bay dredge disposal options. In particular, the upland studies evaluate ways to use dredged material as a resource to restore wetlands, maintain levees, or cap landfills. For example, the Coastal Conservancy and other participants worked for two years to develop an innovative approach to disposing of dredged materials which would otherwise be dumped in the ocean. An upland disposal project, known as the Sonoma Baylands Project, has been constructed in North San Pablo Bay using diked low-lying property acquired by the Sonoma Land Trust through a grant from the Coastal Conservancy. The Coastal Conservancy was responsible for the initial design and engineering work, as well as provided 25% of the project financing. The Corps completed the final design for all site preparation, such as work on levees and moving utilities out of the area to be filled. Several million cubic yards of uncontaminated dredge materials were placed on the site, bringing its level up to that of a tidal wetland (it was previously below sea level). To help bring this unique disposal option to fruition, the Coastal Conservancy worked with the Port of Oakland, LTMS agencies, environmental groups, and a unique group called the Bay Dredging Action Coalition, comprising business, labor and port representatives.

Ocean studies begun by the U.S. Navy and completed as part of the LTMS process have provided valuable information about the impacts of ocean disposal, contributing to the designation of a deep ocean disposal site by the USEPA. This site will be limited to the disposal of clean materials, with testing

requirements for these materials more strict than those currently applied to in-Bay disposal. The Coastal Commission concurred with the USEPA's consistency determination for the site designation in April 1994 and, in September 1994, concurred with a negative determination by the Corps for the first major disposal at this site of dredged material from the Port of Oakland.

In June 1996 the Coastal Conservancy authorized grants totaling almost \$1 million to the Port of Oakland, City of Novato, California Environmental Trust, and BCDC, to develop projects which beneficially re-use dredge material from various locations around San Francisco Bay. Working in partnership with the Coastal Conservancy, the grantees will focus not only on the re-use of material to create wetlands (as with the Sonoma Baylands Project), but also on the re-handling of materials that may not be suitable for aquatic disposal. The program will build on the work of the LTMS to select several sites for further study and implementation of projects.

Major Commercial Ports

Chapter 8 of the California Coastal Act (Coastal Act) establishes specific planning and regulatory procedures for California's "commercial ports" (defined as the ports of San Diego, Los Angeles, Long Beach, and Hueneme). The Coastal Act requires that a coastal development permit be obtained from the Coastal Commission for any development within these ports. However, a commercial port is granted the authority to issue its own coastal development permits once it completes a master plan certified by the Coastal Commission.

The standards for master plans, contained in Chapter 8 of the Coastal Act, require environmental protection while expressing a preference for port-dependent projects. The logic behind this process is that it is environmentally and economically preferable to locate major shipping terminals and other maritime facilities in the major ports instead of siting these industrial facilities up and down the coastline. Each commercial port in California has a certified port master plan which identifies acceptable development uses. If a port desires to conduct or permit developments that are not included in the approved port master plan, the port must apply to the Coastal Commission for an amendment to the master plan or obtain a coastal development permit.

Dredging. Dredge and fill operations cannot move forward under these master plans without establishing:

- a demonstrated need for the dredge or fill operation,
- the severity of impacts from dredge or fill on marine life and other activities within the port, and
- a consensus between State and federal regulatory agencies regarding the adequacy of potential mitigation options.

Major Improvement Projects. In the early 1980's, the ports of Los Angeles and Long Beach unveiled a major development proposal to fill approximately 2000 acres of the outer harbor by the year 2020 at a cost of up to \$4.5 billion. It now appears unlikely that these ports will pursue the massive filling envisioned in the original "2020 Plan," and are working instead to implement a series of smaller development phases. In 1993 the Coastal Commission certified a Port of Los Angeles (POLA) master plan amendment for 395 acres of new landfill (Phase I of Pier 400). The marine resource impacts of this landfill will be mitigated by a 500-acre restoration and enhancement project at Batiquitos Lagoon in San Diego County, and a 136-acre permanent shallow-water habitat mitigation site within the POLA. Construction is underway on the first 250 acres of the Phase I landfill and the POLA holds mitigation credits from the Batiquitos project for the balance of the Phase I landfill. The POLA plans to submit a port master plan amendment to the Coastal Commission for Phase II of the Pier 400 landfill (approximately 185 acres) when additional mitigation credits become available (Simon, pers. comm.).

In 1988, the Port of Long Beach (POLB) received approval for a 147 acre fill at Pier J, which has been completed. Landfill impacts on marine resources were mitigated by a 116-acre wetland restoration project at Orange County's Anaheim Bay in the Seal Beach National Wildlife Refuge. The POLB also bought approximately 700 acres of land owned by the Union Pacific Resources Company and is pursuing re-development of the Long Beach Naval complex for port use. The POLB still desires to fill approximately 100 acres of the outer harbor to upgrade facilities and is working with regulatory agencies to develop an acceptable approach for mitigating this development.

Fish and Wildlife Mitigation. Although Chapter 8 of the Coastal Act provides a preference for port-dependent facilities, it is often difficult to determine adequate mitigation for these projects. Ports and various regulatory agencies are attempting to determine acceptable mitigation measures for future expansion. The difficulty centers around the cost and availability of mitigation sites; the appropriate type and quantity of mitigation; responsibility for land acquisition, management, and remedial actions; and limitations on the use of port funds outside the port vicinity. For example, subtidal habitats in the ports of Los Angeles and Long Beach are unique to that region. Because it may be extremely difficult to recreate a similar habitat, one of the primary mitigation methods for port development activities is to restore or enhance degraded subtidal or low intertidal estuarine or related wetland habitat in the region. This can be challenging since existing development in Southern California has substantially reduced subtidal habitats, while historical coastal wetland habitat has been reduced by over 90% (Dahl 1990).

With the difficulties and costs presented by subtidal or wetland rehabilitation, the ports have been pursuing alternative measures to fulfill mitigation requirements. Regulatory and resource management agencies remain open to considering the use of such alternative measures as upland cuts, in-bay terracing, or even artificial reefs, if these measures can be scientifically proven to provide an appropriate level of mitigation.

Processes to Facilitate Mitigation Solutions. One process used to coordinate upcoming port developments in Southern California, and possible regulatory approaches, is the Bio-Mitigation Team. This team includes representatives from the ports of Los Angeles and Long Beach, Coastal Commission, Coastal Conservancy, California Department of Fish and Game (DFG), National Marine Fishery Service, U.S. Fish and Wildlife Service, Corps, and USEPA. The team was established as a cooperative problem solving group in the mid-1980's to facilitate discussions between the ports and regulatory agencies. Although the process has been helpful by providing a discussion format between the ports and the agencies that regulate them, it has been difficult to gain consensus on major issues as there is no mandatory process or deadlines for decision making.

Other Ports Not Identified in Chapter 8 of the Coastal Act

The remaining ports and harbors along the coast come under a different standard of review than the "commercial ports" designated under Chapter 8 of the Coastal Act. These ports are not granted permitting authority and must apply for coastal permits for proposed facility developments. The Coastal Act does not require that port master plans be developed for these ports and harbors, although planning activities occur through local port planning districts. These ports are critically important to the State because they support major recreation, fisheries and industrial uses. Most of these ports are smaller than the San Francisco Bay and "commercial ports," but face many of the same management issues. The smaller ports experience competition for valuable port space, dredging is often required to maintain entrances, and recreational and commercial vessel traffic conflicts often arise. Examples of some of these ports and harbors located along the California coast include Humboldt Bay, Moss Landing, Port San Luis, Newport Bay, and Dana Point Harbor.

Issues Affecting All Ports and Harbors

California Association of Port Authorities Analysis. In 1992, Senate Bill 1677 (Chapter 575, Stats.1992) was enacted, requiring the analysis of new mitigation processes for port development. This bill authorized the California Association of Port Authorities to prepare a report that "identifies and describes deep-water habitats that could be enhanced, restored, or created as potential mitigation associated with the construction of port facilities in deep-water areas located within a port." The bill required the Coastal Conservancy, DFG, and Coastal Commission to review the report, which has been submitted to the three agencies. The legislation required the reviewing agencies to:

"...verify the information and scientific methodology in the report, including, but not limited to, the geographic location, size, type and value of habitat, public benefit, biological costs and benefits, and financial analysis."

This approach differed substantially from that developed in the LTMS for San Francisco Bay, in which all parties agreed to a detailed reviewing process, scientific methodology, geographic scope, and study timing in advance of actually conducting the work. The process established pursuant to SB 1677 produced a report in a short period of time, but without a consensus in advance among the key regulatory agencies and interested parties regarding an appropriate methodology. All three reviewing agencies expressed concern about the methodology used and indicated that additional analysis would be necessary to demonstrate the value of the six alternatives discussed as potential mitigation for port fill projects.

Despite the aforementioned difficulties, over the past ten years the major commercial ports received Coastal Commission approval of seven landfill projects ranging in size from one to 395 acres, in large part because of the consensus reached among the ports and resource and regulatory agencies on mitigation requirements (Simon, pers. comm.). As a result, subtidal and wetland mitigation projects are in place or under construction at Anaheim Bay, Upper Newport Bay, and Batiquitos Lagoon.

Coastal Conservancy Port Mitigation Study. Continuing concern about the potential for problems with fish and wildlife mitigation to delay port development led to the enactment of Assembly Bill 2356 (Chapter 751, Stats.1989). This bill directed the Coastal Conservancy to prepare a report regarding port development and any problems associated with implementing appropriate mitigation processes. The final report, being prepared in cooperation with other State and federal regulatory agencies and the ports, is scheduled to be submitted to the Governor and Legislature in the first quarter of 1997. Coastal Conservancy staff indicate that the report provides a number of findings and recommendations to expedite implementation of mitigation measures for offsetting impacts of port development projects. Major issues and potential recommendations being evaluated in the report are the need for:

- the Coastal Conservancy to prepare restoration plans for candidate port mitigation sites;
- the Resources Agency and Coastal Conservancy to continue pursuing the development of a Southern California wetland restoration clearinghouse or other appropriate banking mechanism that would enable ports to satisfy mitigation requirements;
- State Agencies to improve their coordination of port development and mitigation issues;
- resource agencies to form joint ventures with the ports to accomplish resource enhancement and port mitigation;
- procedures to avoid future delays associated with the use of funds generated on public trust lands to implement mitigation projects outside the boundaries of port jurisdiction;

- ports to fully document a project's need and any measures taken to avoid or reduce fish and wildlife impacts, prior to seeking government approvals for compensatory mitigation proposals;
- agencies to give high priority to port issues and for the Legislature to provide adequate agency funding as an investment in economic development;
- port and agency directors to participate consistently and productively in regional mitigation working groups; and
- the Coastal Conservancy and DFG to take the lead in completing projects to help determine the mitigation credit appropriate for building artificial reefs. (Denninger, pers. comm.).

As a general premise, the Coastal Conservancy assumes that funds advanced by resource agencies for port mitigation would be reimbursed by ports when they use mitigation credits created by the agency efforts. However, these agencies may initially require up front funding to create conservation banks, a banking clearinghouse, and associated procedures to ensure that these banks provide a regional approach to the habitat restoration.

State Policy on Conservation Banks. Conservation banking could provide a new way for ports to obtain mitigation for development projects. Governor Wilson's wetlands conservation policy specifically calls for the development of mitigation banking guidelines to facilitate a proactive approach to mitigating the impacts of projects on wetland resources. The Coastal Conservancy has actively pursued the concept of mitigation banking by establishing projects in Humboldt Bay and Orange County. However, the Administration's wetland and conservation banking policies expand on traditional mitigation banking by emphasizing a regional approach.

On April 7, 1995, the Resources Agency released a document titled, *Official Policy on Conservation Banks* which promotes regional resource conservation by establishing a second generation of mitigation banks called conservation banks. The intent of these conservation banks is to create a series of regional preserve systems to protect habitats, linkages between habitats, and the species dependent upon them. Conservation banks are also intended to anticipate future regional conservation needs in advance of development proposals. These banks offer an environmentally beneficial alternative to the current piecemeal practice of requiring mitigation for individual project impacts that may have little connection to the ecosystem needs of the region (watersheds, uplands, buffers). In addition, conservation banks can take advantage of economies of scale by financing larger projects that may not be possible using a project-by-project approach.

The California Resources Agency, State Coastal Conservancy, and U.S. Department of the Interior are working to establish a Southern California Wetlands Clearinghouse which would define a new approach to restoring Southern California's severely diminished coastal wetlands and secure more certain mitigation for appropriate coastal development. There are two objectives to this proposal: first, to facilitate more effective and expeditious restoration of Southern California's severely degraded coastal wetlands and, second, to reduce the costs, uncertainty and transactional delays now being experienced by developers (such as ports) who must mitigate the effects of development projects. Under the proposed system, the 20-year wetland restoration needs for the Southern California coastal wetlands ecosystem would be projected; priorities among those projects would be agreed upon by all regulatory agencies; an agency (or agencies) would be established to plan, undertake or coordinate the construction and monitoring of the agreed-upon restoration projects; and funding from port or other coastal project proponents who require mitigation credits would be coordinated.

Infrastructure Challenges. Growth in commercial port cargo movements continues to increase the need for land-side and marine transportation facilities. Over the last 30 years, containerized shipping has revolutionized maritime port services, necessitating container cranes, shore-side storage space, truck and rail transportation connections, and dredging to ensure adequate water depth for larger ships. Commercial shipments include liquid or dry bulk cargoes, containers, neo-bulk cargo such as steel, lumber, or autos, and general cargoes. In addition, maritime activities normally include passenger vessels, ship repair or construction, and related ocean vessel support services.

A major challenge for the ports of Los Angeles and Long Beach and some Northern California ports is the lack of adequate facilities for land transportation of goods to and from port facilities. The ports of Los Angeles and Long Beach are working with local governments to complete the Alameda Transportation Corridor, a truck and rail thoroughfare between the ports and major facilities in downtown Los Angeles. The Port of Oakland is working to improve existing rail facilities through the Sierra Nevada mountain range to allow them to better serve markets in the Midwest and on the East Coast. The objective is to create a seamless intermodal system to convey goods from ocean transit, through ports, and into truck, rail, or other transportation systems for delivery to end users.

The California Marine Affairs and Navigation Conference (C-MANC) released an advisory paper in February 1996 which recommends that California take a more active role in maritime policy to help address the needs of California ports. The C-MANC believes there has been a substantial decline in the historic relationship between the federal government and ports as partners in port management, citing the federal government's announcement that beginning fiscal year 1998, the U.S. Army Corps of Engineers will no longer dredge small craft harbors (22 ports in California require this dredging) and will instead turn this responsibility over to local government or private sector sponsors. This redefinition of the federal role would eliminate funding for jetties, other hard protective structures, and dredging.

The C-MANC recommends that the State develop a maritime policy to help provide the necessary maritime infrastructure for California's ports over the next twenty-five years. The concern expressed regarding the need for such a policy extends beyond maintenance of ports and harbors to the entire intermodal system of channels, wharves, highways, rails, and end-user terminals that will be necessary for California to maintain and gain market share in a competitive west coast market, which includes Canada and Mexico. The C-MANC recommends that a maritime policy include the following key points:

- appointment of a maritime industry ombudsman within State government to help convey maritime needs to government officials,
- development of clear goals and objectives for the State's maritime future,
- identification and support of multiple financial options for ports and harbors to fund changing infrastructure needs,
- completion of a comprehensive economic study on the value of California's ports and harbors, and
- streamlining of the State's environmental permitting process. (C-MANC 1996).

Establishing a maritime policy in California would require input and participation of the maritime community, members of the public, executive branch agencies and their departments, and the legislature. The recommended Ocean Resources Coordinating Council (see Chapter 6) could provide an excellent forum to determine the most appropriate course of action on developing such a policy for California.

California Tidelands Trust

Most California ports and harbors operate on sovereign State land granted to them in trust by the Legislature for the purpose of operating and maintaining port facilities for Statewide benefit. The State Lands Commission (SLC) is charged with overseeing the use of sovereign land and retains any authority not granted in trust. The standard for SLC approval of projects on public trust lands is that the projects must be consistent with the terms of the legislative grant supporting maritime commerce, navigation, fisheries, or recreation. The SLC typically acts as a “responsible” agency for CEQA review of port-related projects on such land. As a responsible agency, the SLC participates, along with many other agencies, in evaluating environmental impacts and establishing fish and wildlife mitigation requirements.

The SLC public trust responsibilities include overseeing certain major capital expenditures, reviewing annual statements of revenues and expenditures, and providing assistance on issues related to use of port land held in trust and any associated revenues. Two issues have arisen regarding the use of revenues generated on public trust lands, the first concerning use of these revenues for fish and wildlife mitigation outside of port boundaries and the second concerning the more general question of appropriate use of tideland trust revenues.

Use of Port Revenues For Offsite Mitigation. In response to concerns about the use of port revenues for offsite mitigation, the Legislature twice modified trust grants to allow use of port revenues for offsite mitigation of environmental impacts from port projects on public trust lands. The Legislature permitted the cities of Los Angeles and Oakland, acting through their Board of Port Commissioners, to use trust revenues for the enhancement, restoration and management of land located outside the trust grant. For the City of Los Angeles, this was specifically restricted to Batiquitos Lagoon in the County of San Diego. In both instances, the Legislature conditioned use of these revenues on four findings:

1. There must be no adequate areas for mitigation within the geographical area of the trust grant,
2. Offsite mitigation would promote trust purposes,
3. Mitigation would be in best interests of the State, and
4. Title to or interest in land acquired would be held in trust by the State Lands Commission. (PRC Sections 6306.1 and 6306.2).

In 1987 the Legislature failed to enact a blanket authorization to allow trust revenues to be spent for offsite mitigation, with specified criteria for such use (including review by the State Lands Commission). In 1991 the Kapiloff Land Bank Act (PRC Section 8600 et seq.) was amended to allow ports and others to deposit funds with the SLC for use on projects mitigating the environmental impacts of development. This mechanism is presently being used by ports; however, it lacks the comprehensive nature of the 1987 bill the Legislature failed to enact. Future enactment of an all-inclusive authorization could help maximize the ability of ports to mitigate environmental impacts of development.

Appropriate Use of Tideland Trust Revenues. As to the more general question of the appropriate use of tideland trust revenues, the SLC has clearly stated that tideland trust revenues may only be spent to promote or accommodate recognized trust uses, such as maritime commerce, navigation, fisheries, and marine recreation. Trust revenues are not to be spent for municipal purposes (i.e., non-trust related local government services) and all expenditures must demonstrate a clear and direct relationship between the expenditure and a public trust purpose. The State Attorney General’s office identified the following criteria for determining whether a transfer of trust revenues could be considered a “necessary expenditure”:

- the service provided by the local government must be a proper trust expense;

- the service must be performed on trust property, or must provide a direct benefit to the trust property;
- the cost of the service must be reasonable;
- there must be a system of billing/payment in place which can be audited;
- neither the trust nor its concessionaires or tenants is already paying fees for the services, such as through taxes; and
- the fees for services contract is entered into before the service is performed.
(Lungren and Walston, pers. comm.).

The principles of protecting public trust resources, and the integrity of the revenues derived from using public trust lands, must be maintained to support commerce, navigation, fisheries, or recreation uses, consistent with the Legislature's intent. This is particularly important with regard to the use of these funds for mitigating port improvement projects, as misappropriation of these funds to non public trust uses lessens the ability of ports to support necessary improvements and mitigate impacts to wildlife resources affected by those projects.

FINDINGS AND RECOMMENDATIONS

Finding

California's ports are vital components of national, State, and local economies, generating over \$6 billion for the California economy in 1992. Port maintenance and improvement activities, which can be achieved in an environmentally acceptable manner, are important factors in maintaining a growing port industry and a healthy economy. State processes for evaluating proposed projects, associated mitigation measures, and monitoring activities can be complex and time consuming. This is compounded by requirements of the various federal agencies that often have separate processes and standards for development. Improving the efficiency of regulatory and planning procedures is a complex undertaking due to the number of agencies involved and nature of the issues at stake, such as the type of development (dredging, filling, pier construction), degree of habitat impact (wetland, subtidal), and availability and suitability of mitigation options.

- Recommendation D-1. Develop a wetlands restoration clearinghouse or other appropriate banking mechanism which would enable ports to satisfy mitigation requirements.*** The Governor's 1997-98 budget proposes \$575 million for the Coastal Conservancy to establish a Southern California wetlands restoration clearinghouse and another \$509,000 for the establishment of a regional wetlands mitigation bank in the San Francisco Bay Area. For such a clearinghouse to be established, three essential components must be in place:
- resource and regulatory agencies, the ports, and interested members of the public must support and participate in the design and implementation of the clearinghouse;
 - funding must be provided to initially establish the clearinghouse (the Governor's budget proposal has not yet been approved by the Legislature); and

- sites where mitigation credits can be derived and used for compensation must be identified and available.

Finding

Public trust resources, and the revenues derived from use of public trust lands, must be protected so that they continue to support legislatively mandated public trust uses such as maritime commerce, navigation, fisheries, and recreation. The State's responsibility to protect public trust resources and revenues extends to port and harbor facilities operated on sovereign State lands. Misappropriation of these funds to non public trust uses lessens the ability of ports to support necessary improvements and mitigate impacts to wildlife resources affected by those projects.

Recommendation D-2. The State of California should determine if the expenditure of revenues derived from public trust lands located within port facilities is consistent with authorized public trust uses and, if not, to take necessary action to preserve these funds for appropriate trust purposes. The legislature has carefully provided protections for public trust resources located throughout the coastal zone, including within its port facilities. These resources, and the revenues they generate, must be protected in accordance with this stewardship responsibility.

Finding

California has not adopted a comprehensive maritime policy that focuses on the full range of issues facing the State's ports and harbors, including intermodal transportation. Other competitors for Pacific Rim trade (Mexico, Canada, Washington, and Oregon) have developed such policies. The potential for new trade with the Pacific Rim over the next 25 years is substantial. However, the intermodal system of channels, wharves, highways, rails, and end-user terminals will need to be improved to provide a seamless and efficient conveyance system so that California ports and harbors can remain competitive for Pacific Rim trade in the years to come.

Recommendation D-3. The State should work with the ports and harbors to develop a maritime policy that sets clear goals and objectives for the State's maritime industry. This policy should include:

- methods to improve communication and coordination between the maritime industry and State of California,
- new and innovative ways to help fund port maintenance (particularly in small port facilities),
- an economic analysis to better quantify the contribution California's ports and harbors make to the State economy, and
- ways to make the environmental review of, and implementation of mitigation measures for, port development projects more efficient.